IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1335 OF 2006
IN
SUIT NO.1154 OF 2006

Smt.Tarubai Pandurang Patil
and Ors. ..Plaintiffs
Vs.
M/s.Rahul Construction Co.
and Ors. ..Defendants

Mr.Nandu Pawar for Plaintiffs
Mr.S.P.Nalawade for Defendant Nos.1 and 2

CORAM: S.A.BOBDE,J.
DATE : FEBRUARY 06, 2007

P.C.

1. By this Notice of Motion, the plaintiffs are seeking appointment of Receiver or injunction to restrain the defendants from parting with possession of the suit property. The plaintiffs are heirs of late Shri.Pandurang Maruti Patil who is said to have sold land under the Agreement dated 19.10.1988. According to the plaintiffs, the defendants have not paid the entire consideration and therefore, they seek Receiver or at least injunction.

2. The learned counsel for the defendants points out that the total amount payable to the plaintiffs is not specified in the Agreement. What is

specified in the agreement is the rate i.e. 1710/- per square yard vide clause 1. He also relies on clause 5 of the agreement, which reads as under:

. "(5) The exact area of the said property shall be ascertained on joint survey to be made by the Architect or Surveyor of the Vendor and the Architect or Surveyor of the Purchasers on or before the completion of the sale at their respective costs and the purchase price payable by the Purchasers to the Vendor at the aforesaid shall be determined on the completion of such joint survey."

. Thus, the learned counsel for the defendants submits that the total amount of purchase price is not specified because the exact area of the property which was to be conveyed, is not specified in the Agreement. The joint survey which was contemplated for the payment of purchase price vide clause 5, has also not been conducted. This is not disputed on behalf of plaintiffs. It is further pointed out on behalf of defendants that the schedule to the Agreement also does not specify the

property.

3. The contention on behalf of the defendants is that out of the total area of 491 sq.yards i.e. area of 410 sq. mts. which was owned by the plaintiffs, the defendants have taken possession and developed only 245.50 sq. mts. i.e. 293.60 sq. yards. They have categorically stated on oath vide paragraph 4 that they have taken possession of 245.50 sq. mts. of land and they have not taken possession of 165.40 sq. mts. If that be so, it appears that prima facie at this stage, the plaintiffs' contention that they were entitled to much higher consideration, cannot be determined conclusively. Interim relief therefore, cannot be granted on that ground. In the circumstances, I am of the view that plaintiffs are not entitled to appointment of receiver or injunction. Notice of Motion is, therefore, dismissed.

4. Parties are liberty to apply for and get the joint survey done of the land which is the subject matter of the Agreement. Ad-interim order is hereby vacated.

[S.A.BOBDE, J.]